IN THE HIGH COURT OF BOMBAY AT GOA

APPLICATION FOR APPOINTMENT OF ARBITRATOR NO.12/2000

M/s. Parwani Builders,
a Partnership firm of Engineers
and Contractors, Registered under
the Partnership Act and having
their office at 262-C, Laxminagar,
Nagpur - 440 022 and presently
having their sub-office at
3 'Ashirwad', Altinho,
Dattawadi, Mapusa, Goa. .... Applicants.

V/s.

1. Konkan Railway Corporation Ltd.,
a Government of India Undertaking,
having their office at Souza Towers,
4th Floor, Neaer Municipal Garden,
Panaji, Goa. 403 001.

2.The Chief Engineer,
Konkan Railway Corporation Ltd.,
having his office at Souza Towers,
4th Floor, Near Municipal Garden,
Panaji, Goa 403 001.

3. The Chairman and Managing
Director, Konkan Railway
Corporation Ltd., Belapur Bhavan,
Plot No.6, Sector 11, Belapur, C.B.D.,
New Bombay - 400 614. ..... Respondents.

Mr. Sudin M.S. Usgaonkar, Advcote for the applicant.

Mr. E. Afonso, Advocate for the respondents.

CORAM : F.I. REBELLO, J.

DATE : JUNE 26, 2003.

ORAL JUDGMENT:

On behalf of the applicants, it is contended that as the respondents have failed to appoint an Arbitrator and as such, an Arbitrator shall be appointed

not in terms of the contract. On behalf of the Respondents, it is contended that the contract cannot be by-passed and appointment should be in terms of the contract.

Under Section 11, the delegate of the C.J., cannot bye-pass the terms of the contract. At the highest, on failure to appoint within the time stipulated, the learned C.J. or his delegate assumes jurisdiction to appoint. I am of the considered view that in matter of contracts where the public bodies are involved, as far as possible, even if the public body does not appoint an arbitrator in terms of the contract, the delegate under Section 11 should normally follow the terms of the contract. I, therefore, have no reason to depart from the view taken in earlier orders to the same effect.

2. In the light of that, the following order :

The Chairman and the Managing Director is directed to forward to the applicants herein a panel of five names within 8 weeks from today. On the applicants naming the arbitrator within two weeks thereafter, the Managing Director to appoint the Arbitrator on behalf of respondent No.1 within 4 weeks thereafter. The two arbitrators thereafter to appoint the third arbitrator

in terms of the arbitration agreement.

All issues including limitation, are left open for consideration by the arbitrator.

Application stands disposed of. Certified copy Expedited.

F.I. REBELLO, J.

ssm.